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6 Attorneys for Defendant and Cross-Complainant
7 GERALD ARMSTRONG

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10
11 CHURCH OF SCIENTOLOGY OF)
12 CALIFORNIA, a California)
13 corporation,)

14 Plaintiff,)

15 vs.)

16 GERALD ARMSTRONG,)

17 Defendants.)

18 _____)
19 GERALD ARMSTRONG,)

20 Cross-Complainant,)

21 vs.)

22 CHURCH OF SCIENTOLOGY OF)
23 CALIFORNIA, a California)
24 corporation, L. RON)
25 HUBBARD, CHURCH OF)
26 SCIENTOLOGY INTERNATIONAL,)
27 RELIGIOUS TECHNOLOGY)
28 CENTER, and DOES 1 through)
100, inclusive,)

_____)
Cross-Defendants.)

CASE NO.: 420 153

[SEVERED ACTION]

NOTICE OF MOTION AND MOTION FOR
ORDER COMPELLING PRODUCTION OF
DOCUMENTS AND PAYMENT OF REA-
SONABLE ATTORNEY'S FEES; DEC-
LARATION OF JULIA DRAGOJEVIC;
DECLARATION OF GERALD ARMSTRONG;
MEMORANDUM OF POINTS AND AUTHORI-
TIES IN SUPPORT THEREOF

DATE: April 15, 1985
TIME: 9:00 a.m.
DEPT: 57

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1 TO ALL PARTIES AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD
2 HEREIN:

3 PLEASE TAKE NOTICE that on April 15, 1985, at 9:00
4 a.m., or as soon thereafter as the matter may be heard in
5 Department 57 of the above-entitled Court, located at 111
6 North Hill Street, Los Angeles, California, Gerald Armstrong
7 (hereinafter "Armstrong"), will move the Court for the
8 following orders:

9 1. An order compelling Cross-Defendant Church of
10 Scientology of California (hereinafter "California Church")
11 to produce for inspection and copying the documents described
12 in Request Nos. 1, 2, 3, 6, 7 and 13 of the Request for
13 Production of Documents served upon Plaintiff on August 2,
14 1984. The California Church and its attorneys have failed to
15 produce said documents, which are more particularly set forth
16 and identified in the attached Declaration of Julia
17 Dragojevic.

18 2. An order directing the California Church to
19 pay reasonable attorneys fees to Armstrong's attorneys in the
20 amount of \$500.00 due to Plaintiff's refusal to produce said
21 documents, necessitating time spent in the preparation of the
22 within motion and an appearance thereon.

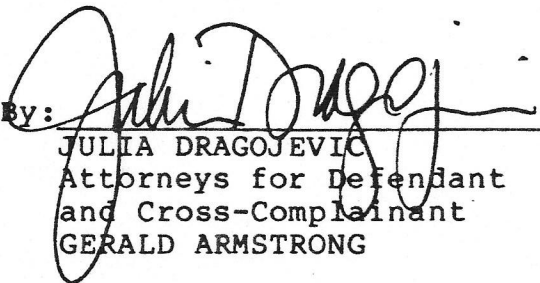
23 This Motion is made upon the grounds that the
24 documents and information contained therein are relevant to
25 the subject matter involved in the pending action and are not
26 privileged, and that Plaintiff's objection to said requests
27 are without substantial justification.

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1 Said Motion is based upon this Notice, the plead-
2 ings, records and files herein, the attached Declarations of
3 Julia Dragojevic and Gerald Armstrong, the Memorandum of
4 Points and Authorities filed herewith and such other evidence
5 as may be presented at the hearing of this Motion.
6

7 DATED: March 22, 1985

8 CONTOS & BUNCH

9
10 BY: 
11 JULIA DRAGOJEVIC
12 Attorneys for Defendant
13 and Cross-Complainant
14 GERALD ARMSTRONG
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DECLARATION OF JULIA DRAGOJEVIC

I, Julia Dragojevic, declare:

1. I am an attorney at law, duly licensed to practice before all of the Courts of the State of California, and am an associate in the law firm of Contos & Bunch, attorneys of record for Armstrong, herein.

2. The Request for Production of Documents, which is the subject of this Motion, was served in connection with a Cross-Complaint filed by Armstrong on September 17, 1982, against, among others, the Church of Scientology of California. The Cross-Complaint was severed by order of Judge Lawrence Waddington from the underlying Complaint and Complaint in Intervention filed respectively by the California Church and Mary Sue Hubbard against Armstrong. Both underlying Complaints were tried before Judge Paul G. Breckenridge, Jr., during a five-week trial from May 3 through June 8, 1984.

3. On June 20, 1984, Judge Breckenridge issued a Memorandum of Intended Decision, a copy of which is attached hereto as Exhibit "A." Said Intended Decision was deemed the Court's Statement of Decision by Minute Order of August 10, 1984. The Memorandum of Intended Decision will provide this Court with Judge Breckenridge's Concise Findings of Fact and Conclusions of Law in an otherwise voluminous case.

4. The Cross-Complaint of Armstrong was originally severed upon the representations of counsel for the California Church that the underlying complaints would

1 take only five days to try and that the Cross-Complaint would
2 require months of trial. As it turned out, the trial of the
3 underlying actions consumed approximately five weeks of trial
4 time. During the trial, however, numerous issues of the
5 Cross-Complaint were raised and evidence thereon was sub-
6 mitted.

7 5. The Cross-Complaint alleges causes of action
8 for fraud, breach of contract, intentional infliction of
9 emotional distress, tortious interference with contract and
10 libel. Because the file in this action is so voluminous, a
11 copy of the Cross-Complaint, as amended, is attached hereto
12 as Exhibit "B." Essentially, the Cross-Complaint alleges
13 that Armstrong was fraudulently induced to join the
14 Scientology organization through the misrepresentations of
15 Cross-Defendants California Church and L. Ron Hubbard (here-
16 inafter "Hubbard") regarding the background and accomplish-
17 ments of Hubbard, as well as false promises by the California
18 Church as to what Armstrong would obtain as a paying member
19 of Scientology. Further, the Cross-Complaint alleges that
20 Cross-Defendants intentionally inflicted emotional distress
21 by engaging in harassment of Armstrong by hiring private
22 investigators to follow him and peer through the windows of
23 his home, among other things; by taking items entrusted to
24 his care; by causing him tremendous fear, trepidation and
25 anxiety in declaring him a "Suppressive Person" subject to
26 the Fair Game Doctrine of Cross-Defendants which provides
27 that a Suppressive Person "may be deprived of property or
28 injured by any means by a Scientologist without any

1 discipline of the Scientologists. May be tricked, sued or
2 lied to or destroyed." The Cross-Complaint also alleges that
3 Cross-Defendants libeled Armstrong by labeling him a "Sup-
4 pressive Person" and by publishing and circulating a document
5 entitled "Suppressive Person Declare Gerry Armstrong," which
6 accuses Armstrong of criminal behavior, among other things.
7 A copy of said Suppressive Person Declare--Gerry Armstrong is
8 attached hereto as Exhibit "C."

9 6. On August 2, 1984, Armstrong served a Request
10 for Production of Documents upon the California Church. A
11 copy of said Request is attached hereto as Exhibit "D." A
12 response to said Request was served on August 23, 1984. A
13 copy of said Response is attached hereto as Exhibit "E." Of
14 fifteen requests, the California Church produced no docu-
15 ments. The California Church did, however, indicate in
16 response to five of the requests that the documents were
17 either in the process of being compiled or had not been
18 found.

19 7. In order to obviate the necessity of a Motion
20 to Compel, Declarant telephoned John G. Peterson, counsel for
21 Cross-Defendant Church of Scientology of California, on
22 September 13, 1984. At that time Mr. Peterson was not in,
23 and Declarant left a message. On September 14, 1984,
24 Declarant again called Mr. Peterson, who was not in. A
25 message was left. On September 17, 1984, Mr. Peterson
26 returned Declarant's call, but Declarant was not in the
27 office. Upon Declarant's return to the office, Declarant
28 telephoned Mr. Peterson, but he was not in.

1 On the same date, Declarant sent a letter to
2 Mr. Peterson requesting a response as to whether or not his
3 client would be willing to provide further responses to
4 Requests Nos. 1, 2, 3, 6, 7, 11, 12 and 13. Declarant
5 suggested that the matter be handled by telephone and
6 indicated that continued attempts would be made to reach Mr.
7 Peterson. A copy of said letter is attached hereto as
8 Exhibit "F."

9 On September 18, 1984, Mr. Peterson telephoned
10 Declarant, but Declarant was not in. Declarant then tele-
11 phoned Mr. Peterson, who was not in. Mr. Peterson returned
12 the call and stated that he would review Declarant's letter
13 of September 17, 1984, and would review the relevant plead-
14 ings. He further stated that he would be in his office on
15 September 19, and Declarant agreed to telephone him on that
16 date once he had had the opportunity to prepare for a discus-
17 sion. On September 19, 1984, Declarant telephoned Mr.
18 Peterson, but was told by his secretary that he would be in
19 deposition the entire day. Apparently, the depositions had
20 arisen unexpectedly. Delcarant then received a telephone
21 call from attorney Michael Magnuson, associate counsel, who
22 stated that he and Mr. Peterson would review the materials.
23 Because Mr. Peterson was in deposition, Mr. Magnuson tenta-
24 tively suggested that a conference call take place on
25 September 20 in the afternoon. Mr. Magnuson advised that he
26 would telephone Declarant on the morning of September 20 to
27 set up the conference call.

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1 8. On the morning of September 20, Mr. Magnuson
2 telephoned Declarant and advised that a conference call could
3 not take place in that Mr. Peterson was involved in deposi-
4 tions on the 20th and 21st. He suggested that a conference
5 call take place on September 24. Because the time in which
6 Declarant had to file a motion to compel was running out, Mr.
7 Magnuson agreed to an extension to October 1, 1984. A copy
8 of the letter confirming said extension is attached hereto as
9 Exhibit "G."

10 9. On September 24, 1984, Mr. Magnuson telephoned
11 Declarant and again advised that Mr. Peterson was unavail-
12 able. However, he and Mr. Peterson had discussed the matter
13 and they were willing to go forward with the conference
14 without Mr. Peterson's presence. Thus, Declarant and Mr.
15 Magnuson reviewed the objections of his client to the Request
16 for Production in an attempt to resolve all differences.
17 After the conference, the California Church stood on its
18 refusal to produce documents requested in Nos. 1, 2, 3, 6, 7
19 and 13. Thus, it is necessary for the Court to determine
20 whether production should be compelled.

21 10. The following Requests for Production continue
22 to be in dispute between the parties:

23
24 REQUEST NO. 1:

25 All originals and all copies of pre-clear or audit-
26 ing files belonging to Gerald Armstrong.

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1 RESPONSE TO REQUEST NO. 1:

2 Objection. The documents sought are covered by the
3 priest-penitent privilege, Evidence Code sections 1033 and
4 1034. Additionally, the request seeks to interfere in the
5 internal affairs of a religious organization, thus the
6 documents sought are protected by the First Amendment; and
7 because these files contain personal notes and observations
8 of ministers of the Church, their disclosure would constitute
9 an invasion of privacy.

10 CROSS-DEFENDANT'S CURRENT POSITION WITH RESPECT TO REQUEST
11 NO. 1:

12 The California Church stands on its objection as set
13 forth above.

14 ARGUMENT:

15 Cross-Defendant objects to this Request on the
16 grounds of privilege (priest-penitent), First Amendment and
17 invasion of privacy. The pre-clear or auditing files of
18 individual members of the Church of Scientology of California
19 or any other Church of Scientology contain information
20 derived from allegedly confidential communications between
21 the members and "auditors" of the Church of Scientology. The
22 pre-clear files are essentially records kept by the Church of
23 Scientology of counseling sessions known as "auditing."
24 During such sessions, Scientology members are required to
25 reveal the most intimate, painful and humiliating experi-
26 ences, thoughts and events of their present and past lives to
27 their auditors. The information is taken down by the auditor

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1 and supposedly kept in confidential pre-clear files. (See
2 Declaration of Gerald Armstrong, attached hereto.)

3 As more fully explained in the Declaration of Gerald
4 Armstrong, Armstrong believed, when he became a member of
5 Scientology, that all information disclosed by him to his
6 auditor would remain confidential. It was only during his
7 involvement with Scientology that he learned how the
8 so-called "confidential" auditing information was used time
9 and again to blackmail individuals. It was not until he left
10 Scientology that he discovered that the use of "confidential"
11 auditing information for intelligence purposes existed as a
12 written policy. (See Armstrong Declaration, p. 5, para. 8.)

13 Further, during the trial of the underlying
14 complaints, evidence was presented on the use of information
15 contained in pre-clear files for purposes of intimidation and
16 psychological abuse. In his Memorandum of Intended Decision,
17 Judge Breckenridge discusses the fear of individuals who
18 leave the Church of Scientology, knowing that it has retained
19 the individual's pre-clear file:

20
21 "Each (person) has broken with the
22 movement for a variety of reasons,
23 but at the same time, each is, still
24 bound by the knowledge that the
25 Church has in its possession his or
26 her most inner thoughts and confes-
27 sions, all recorded in 'pre-clear
28 (P.C.) folders' or other security

1 files of the organization, and that
2 the Church or its minions is fully
3 capable of intimidation or other
4 physical or psychological abuse if
5 it suits their ends. The record is
6 replete with evidence of such
7 abuse."

8
9 And:

10
11 "The practice of culling supposedly
12 confidential 'P.C. folders or files'
13 to obtain information for purposes
14 of intimidation and/or harassment is
15 repugnant and outrageous. The
16 Guardian's Office, which plaintiff
17 headed, was no respecter of anyone's
18 civil rights, particularly that of
19 privacy."

20
21 Not only does Armstrong request the production of
22 his pre-clear files because he fears the use of information
23 for intimidation and harassment by the California Church, but
24 because the information contained in said files are a
25 chronology of his path through initiation, membership and
26 departure from the Church of Scientology, contain his inner-
27 most thoughts and experiences, and, above all, belong to him.
28 The California Church does not object to the request on the

1 grounds of relevancy or materiality. Rather, it seeks to
2 prevent Armstrong from obtaining his own written thoughts on
3 the ground that the production would invade the priest-
4 penitent privilege and would further invade First Amendment
5 rights and rights against invasion of privacy of the Church.

6 With respect to the First Amendment argument,
7 Armstrong does not seek to interfere with the internal
8 affairs of a religious organization. Only the truth or
9 falsity of sincerely held religious beliefs are immune from
10 inquiry under the free exercise clause of the First Amend-
11 ment. By requiring production of Armstrong's pre-clear
12 files, this Court is not making an inquiry into the truth or
13 falsity of religious beliefs, but simply making available to
14 Armstrong information about himself which he disclosed to his
15 auditor. This information would include such things as
16 family background, scholastic history, medical history and
17 anything and everything about the person, Gerald Armstrong.

18 The First Amendment objection is purely a smoke
19 screen to misdirect the Court's attention.

20 The claim that production of pre-clear files would
21 invade the privacy of the "ministers of the Church" is
22 unintelligible. As Judge Breckenridge found in his Memo-
23 randum of Intended Decision, the California Church is "no
24 respecter of anyone's civil rights, particularly that of
25 privacy" in its use of information from pre-clear files to
26 intimidate and/or harass individuals.

27 Thus, we are left with the objection based on the
28 priest-penitent privilege. Said objection is discussed in

1 the attached Memorandum of Points and Authorities. As the
2 Court will see, said objection is misplaced and improper. As
3 the Court will further see, auditing files have been ordered
4 to be produced in other cases similar to Armstrong's herein.
5

6 REQUEST NO. 2:

7 All originals and all copies of Guardian's Office
8 files pertaining to Gerald Armstrong.

9 RESPONSE TO REQUEST NO. 2:

10 Objection. The information requested is protected
11 by the attorney work-product doctrine and the attorney-client
12 privilege.

13 CROSS-DEFENDANT'S CURRENT POSITION WITH RESPECT TO REQUEST
14 NO. 2:

15 The California Church stands on its objection as
16 set forth above.

17 ARGUMENT:

18 The Guardian's Office of the California Church is
19 responsible for various functions including public relations,
20 finance, legal work and intelligence gathering. The intel-
21 ligence gathering ranges from the use of supposedly confi-
22 dential information from pre-clear files (see Memorandum of
23 Intended Decision, pages 10 and 12) to covert intelligence
24 "operations" involving private investigators, bugging of
25 phone lines, and general harassment.

26 Anyone who is considered an enemy of or critical of
27 the Church of Scientology (which includes individuals in
28 litigation with them) will be investigated by the Guardian's

1 Office and may be subject to Guardian's Office intelligence
2 operations.

3 Because Armstrong was the subject of harassment,
4 including being followed and surveilled by individuals who
5 admitted being employed by Cross-Defendant; being assaulted
6 by one of these individuals; being struck bodily by a car
7 driven by one of these individuals; having two attempts made
8 by said individuals to involve Armstrong in a freeway auto-
9 mobile accident; having said individuals come onto
10 Armstrong's property, spy in his windows, create disturbances
11 and upset his neighbors (see Memorandum of Intended Decision,
12 Appendix, pages 14-15), Armstrong believes that the
13 Guardian's Office of the California Church has files in which
14 the subject of his harassment is documented. There is most
15 likely more information in said files of which Armstrong is
16 not aware, but which would be relevant to his causes of
17 action for intentional infliction of emotional distress and
18 libel.

19 Since the California Church has not identified any
20 documents in response to Request No. 2, no intelligent
21 decision can be made as to whether said documents are pro-
22 tected by the attorney work-product doctrine or the attorney-
23 client privilege. The documents must at least be identified,
24 and may subsequently require inspection by this Court to
25 determine whether or not the objections interposed by the
26 California Church are valid.

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1 REQUEST NO. 3:

2 All originals and all copies of correspondence of
3 the Guardian's Office pertaining to Gerald Armstrong.

4 RESPONSE TO REQUEST NO. 3:

5 Objection. The information requested is protected
6 by the attorney work-product doctrine and the attorney-client
7 privilege.

8 CROSS-DEFENDANT'S CURRENT POSITION WITH RESPECT TO REQUEST
9 NO. 3:

10 The California Church stands on its objection as
11 set forth above.

12 ARGUMENT:

13 Armstrong incorporates by reference the argument
14 set forth with respect to Request No. 2, supra.

15
16 REQUEST NO. 6:

17 All letters, memorandum, notes and orders pertain-
18 ing to the Suppressive Person Declare Gerry Armstrong of
19 April 22, 1982, Flag Conditions Order 6664R.

20 RESPONSE TO REQUEST NO. 6:

21 Objection. This request is over broad and to a
22 large extent requests materials which seek to invade the
23 internal workings of a religious organization which is
24 protected by the First Amendment and seeks information
25 protected by the attorney-client privilege and the attorney
26 work-product doctrine.

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1 CROSS-DEFENDANT'S CURRENT POSITION WITH RESPECT TO REQUEST

2 NO. 6:

3 The California Church stands on its objection as
4 set forth above.

5 ARGUMENT:

6 Armstrong's Third Cause of Action for Libel con-
7 cerns the publication of two documents entitled "Suppressive
8 Person Declare Gerry Armstrong" on February 18, 1982, and
9 again on April 22, 1982. Following the trial of the under-
10 lying action, the Court found as follows:

11
12 "On February 18, 1982, the
13 Church of Scientology International
14 issued a 'Suppressive Person Declare
15 Gerry Armstrong,' which is an
16 official Scientology document issued
17 against individuals who are con-
18 sidered as enemies of the Organiza-
19 tion. Said Suppressive Person
20 Declare charged that Defendant
21 Armstrong had taken an unauthorized
22 leave and that he was spreading
23 destructive rumors about Senior
24 Scientologists.

25 Defendant Armstrong was unaware
26 of said Suppressive Person Declare
27 until April of '82. At that time a
28 revised Declare was issued on April

1 22, 1982. Said Declare charged
2 Defendant Armstrong with eighteen
3 different 'Crimes and High Crimes
4 and Suppressive Acts Against the
5 Church.' The charges included
6 theft, juggling accounts, obtaining
7 loans on money under false pre-
8 tenses, promulgating false informa-
9 tion about the Church, as founder,
10 and members, and other untruthful
11 allegations designed to make Defen-
12 dant Armstrong an appropriate
13 subject of the Scientology 'Fair
14 Game Doctrine.' Said Doctrine
15 allows any suppressive person to be
16 'tricked, cheated, lied to, sued, or
17 destroyed.'"

18 (See Memorandum of Intended
19 Decision, Appendix, page 13.)
20

21 Armstrong has thus been charged with the commission
22 of crimes and various other acts for which he has brought
23 suit for libel. Documents concerning the Suppressive Person
24 Declare Gerry Armstrong of April 22, 1982, are thus relevant
25 and may lead to the discovery of further evidence.

26 The California Church objects on the grounds that
27 the request is over broad, invades the free exercise clause

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1 of the First Amendment and invades the attorney-client
2 privilege and attorney work-product doctrine.

3 With respect to the contention that the request is
4 over broad, Armstrong does not know what the California
5 Church has in its possession regarding the Suppressive Person
6 Declares in that the California Church has objected to
7 answers concerning these documents. Armstrong should thus be
8 entitled to see all documents relevant to said Declare.

9 With respect to the First Amendment argument,
10 again, Armstrong does not seek to question the truth or
11 falsity of any alleged religious beliefs. He seeks only to
12 obtain relevant evidence of a libel which he alleges has been
13 committed by the California Church and others. The United
14 States Constitution gives every person the absolute right to
15 believe what he wants, but does not create a license to do or
16 say anything in the name of religion. Cantwell v.
17 Connecticut, 310 U.S. 296 (1940). The California Church
18 cannot hide behind the cloak of religion following the
19 commission of a tort. The free exercise clause of the First
20 Amendment has never sanctioned such activity on behalf of a
21 claimed religious organization.

22 With respect to the privilege arguments, an
23 informed decision cannot be made as to whether or not the
24 privilege applies without the identification of the documents
25 or review of said documents by the Court.

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1 REQUEST NO. 7:

2 All letters, memorandum, notes and orders per-
3 taining to the Suppressive Person Declare Gerry Armstrong of
4 February 18, 1982, Flag Conditions Order 6664R.

5 RESPONSE TO REQUEST NO. 7:

6 Objection. This request is over broad and to a
7 large extent requests material which seeks to invade the
8 internal workings of a religious organization which is
9 protected by the First Amendment and seeks information
10 protected by the attorney-client privilege and attorney work-
11 product doctrine.

12 CROSS-DEFENDANT'S CURRENT POSITION WITH RESPECT TO REQUEST
13 NO. 7:

14 The California Church stands on its objection as
15 set forth above.

16 ARGUMENT:

17 Armstrong incorporates by reference the argument
18 set forth with respect to Request No. 6, supra.

19
20 REQUEST NO. 13:

21 Any communication or correspondence and/or other
22 documentation between representatives of Author Services,
23 Inc., and representatives of the Church of Scientology of
24 California regarding Gerald Armstrong and/or the Armstrong
25 litigation.

26 RESPONSE TO REQUEST NO. 13:

27 Objection. This request is vague, ambiguous, over
28 broad, burdensome and seeks information not calculated to

1 lead to the discovery of admissible evidence. In addition,
2 the request violates the attorney work-product rule and the
3 attorney-client privilege.

4 CROSS-DEFENDANT'S CURRENT POSITION WITH RESPECT TO REQUEST
5 NO. 13:

6 The California Church stands on its objection as set
7 forth above.

8 ARGUMENT:

9 Author Services, Inc., is a for-profit corporation
10 organized and run by members of the Church of Scientology.
11 One of their two clients is L. Ron Hubbard, for whom they
12 conduct business affairs.

13 One of the acts complained of by Armstrong in his
14 Second Cause of Action for Intentional Infliction of
15 Emotional Distress is the taking of certain photographs from
16 him, which photographs had been entrusted to his care.
17 Involved in this photograph incident were members of Author
18 Services, Inc. These individual members testified at the
19 trial of the underlying action and admitted involvement.
20 Armstrong is thus requesting documentation between Author
21 Services, Inc., and Cross-Defendant Church of Scientology of
22 California regarding himself and/or this litigation. This
23 documentation is relevant to his cause of action for inten-
24 tional infliction of emotional distress, and may be relevant
25 to other causes of action contained in his Cross-Complaint.

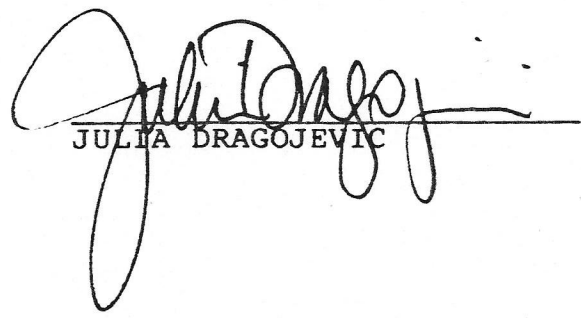
26
27 Based upon all of the foregoing arguments, as well
28 as the attached Memorandum of Points and Authorities, the

1 Declaration of Gerald Armstrong and supporting exhibits,
2 Armstrong respectfully requests that the Court grant the
3 within Motion to Compel Production of Documents, and that the
4 Court further order payment of reasonable attorney's fees in
5 the sum of \$500.00.

6 In connection with the attorney's fees, Declarant
7 has expended three and one-half hours in the preparation of
8 the within Motion and two and one-half hours in connection
9 with the appearance thereon.

10 I declare under penalty of perjury that the fore-
11 going is true and correct.

12 Executed this 28th day of September, 1984, at
13 Woodland Hills, California.

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JULIA DRAGOJEVIC

1 When Armstrong joined the Scientology organization
2 and became a pre-clear, he was told that auditing reports and
3 statements made during auditing were absolutely confidential.
4 (See Armstrong Declaration; pp. 1-2, paragraph 4).

5 He was not aware at that time of a Guardian Program
6 Order, "GO 121669" (a copy of which is attached hereto as
7 Exhibit "H"), written by intervenor, Mary Sue Hubbard, and
8 dated December 16, 1969. During the trial of the underlying
9 complaints, Mary Sue Hubbard admitted to having written this
10 Guardian Program Order. On page 2 of the Order under
11 "Operating Targets" subheading "1," it states as follows:

12
13 "1. To make full use of all
14 files on the organization to effect
15 your major target. These include
16 personnel files, Ethics files, Dead
17 files, Central files, training
18 files, processing files and requests
19 for refunds.

20 2. To assemble full data by
21 investigation of each person
22 located, for possible use in case of
23 attack or for use in preventing any
24 attack and to keep files of such."

25 (See Exhibit "H") (emphasis added).

26
27 Guardian Order 121669 was admitted into evidence
28 during trial of the underlying action as Exhibit AAA, and

1 there was lengthy testimony regarding its contents as it
2 related to the use of "confidential" information from the
3 auditing or pre-clear folders of individuals for use in
4 attacks against them. Documents evidencing the use of
5 auditing information were also introduced into evidence but
6 were specifically sealed by the Court because of their
7 sensitive nature, i.e., as containing information regarding a
8 person's sexual habits, etc.

9 As emphasized in the quote from Guardian Order
10 121669, information to attack individuals considered
11 "enemies" could be taken from "processing files." Although
12 during the trial Mary Sue Hubbard denied that "processing
13 files" were actually auditing or pre-clear folders, her
14 testimony was greatly impeached by the testimony of other
15 witnesses and by the definition of the word "processing" as
16 contained in the Dianetics and Scientology Technical
17 Dictionary which states:

18
19 "PROCESSING, 1. called 'auditing' by
20 which the auditor (practitioner)
21 'listens and commands.'"

22 (A copy of pp. 317-318 of the
23 Dianetics and Scientology Technical
24 Dictionary, 1975, is attached hereto
25 as Exhibit "I").
26

27 It became abundantly clear during the trial that
28 Guardian Order 121669 authorized the use of auditing

1 information for intelligence purposes by the Guardians
2 Office. Other witnesses testified as to participating in the
3 "culling" or extracting of "damaging" information from such
4 files (see Armstrong Declaration, p. 3-5, paragraphs 6-8),
5 even when an individual simply left the Scientology organiza-
6 tion.

7 It would take extensive time and paper to document
8 all of the trial testimony herein relevant to this subject.
9 The impact of the testimony and evidence, however, is
10 succinctly and clearly stated in Judge Breckenridge's Memo-
11 randum of Intended Decision which warrants repetition here:
12

13 "Each (person) has broken with the
14 movement for a variety of reasons,
15 but at the same time, each is, still
16 bound by the knowledge that the
17 Church has in its possession his or
18 her most inner thoughts and confes-
19 sions, all recorded in 'pre-clear
20 (P.C.) folders' or other security
21 files of the organization, and that
22 the Church or its minions is fully
23 capable of intimidation or other
24 physical or psychological abuse if
25 it suits their ends. The record is
26 replete with evidence of such
27 abuse."

28 ///

1 And:

2
3 "The practice of culling supposedly
4 confidential 'P.C. folders or files'
5 to obtain information for purposes
6 of intimidation and/or harassment is
7 repugnant and outrageous. The
8 Guardian's Office, which plaintiff
9 headed, was no respecter of anyone's
10 civil rights, particularly that of
11 privacy."

12
13 There was sufficient evidence presented at trial to
14 convince Judge Breckenridge that auditing or pre-clear
15 folders were not kept in confidence. To the contrary, by
16 written policy, the information contained therein can be used
17 at will for intimidation and harassment purposes.

18 Pursuant to Evidence Code Section 1032, a "peni-
19 tential communication means a communication made in con-
20 fidence." It is clear that based upon the evidence presented
21 during the trial of the underlying action, and Judge
22 Breckenridge's findings thereon, the information in auditing
23 or pre-clear files was never intended to be kept in con-
24 fidence. To state otherwise is a fraud. This is exactly the
25 fraud of which Armstrong complains in his Cross-Complaint.
26 The mere existence of Guardian Office 121669 vitiates any
27 claim of "confidence" the California Church attempts to make.
28 Based upon the evidence adduced at trial, the California

1 Church and Mary Sue Hubbard (at the time she was Controller
2 of the Guardians Office) allowed individual members to
3 believe that their auditing sessions and folders would be
4 kept in strictest confidence, while they secretly followed
5 the guidelines set forth in Guardian Order 121669. Such an
6 abuse of the "priest-penitent" privilege cannot and should
7 not be countenanced by this Court.

8 Where an element of the priest-penitent privilege
9 is missing, the privilege will not apply. People v.
10 Thompson, 133 Cal. App. 3d 419, 184 Cal. Rptr. 72 (1982).

11 In Thompson, Defendant, a confessed murderer,
12 attempted to prevent use of his written confession at trial
13 on the grounds of the clergyman-penitent privilege.

14 Defendant had confessed the murder three years
15 after the fact to a counselor employed by Defendant's
16 employer, Miracle Water Company. Virtually all the employees
17 of the Miracle Water Company were members of The Church of
18 Scientology. This included the "counselor" who in
19 Scientology terms was considered an "operating thetan" and
20 "ethics officer," but who had not been trained as an auditor
21 or "minister." Further, the Court found that no assurances
22 of confidentiality had been made by the "counselor" at the
23 time he told the Defendant to write a confession and turn
24 himself in. The Court stated as follows in holding that no
25 clergyman-penitent privilege existed:

26
27 "The clergyman-penitent privilege is
28 rooted in the imperative need for

1 confidence and trust between the
2 realtor and the recipient. 'The
3 priest-penitent privilege recognizes
4 the human need to disclose to a
5 spiritual counselor, in total and
6 absolute confidence, what are
7 believed to be flawed acts or
8 thoughts and to receive priestly
9 consolation and guidance in return.'
10 (Trammel v. United States, 445 U.S.
11 40, 51, 100 S. Ct. 906, 913, 63 L.
12 Ed. 2d 186)."
13 Id., at 427.

14
15 The Court then held that the elements of "lack of
16 required relationship" and "lack of expectation of confi-
17 dentiality" were missing. Id., at 427.

18 Although the facts of Thompson are different from
19 the present case, it is clear that without the necessary
20 elements present, the privilege will not attach. With the
21 existence of Guardian Order 121669, the privilege could never
22 attach since there is no intention on the part of the
23 Scientology organization to honor the representation of
24 confidentiality.

25 Further, there is no proof that the individuals who
26 audited Armstrong were "ministers" of the Church of
27 Scientology. Evidence Code, Section 1032, requires that the
28 "priest" or "clergyman" be just that. Although the category

1 is broad, the Thompson case holds that with respect to the
2 Church of Scientology the "priest" should be a "minister" or
3 trained "auditor."

4 As with all privileges, under Evidence Code Section
5 405, the burden is on the party claiming the privilege to
6 establish that all elements of the privilege are present. In
7 this case, two of those elements are missing--confidentiality
8 and required relationship of clergyman-penitent. Thus, the
9 objection of the California Church to Armstrong's request for
10 his own auditing and pre-clear files is baseless.

11
12 A. OTHER COURTS HAVE ORDERED THE
13 PRODUCTION OF AUDITING/PRE-CLEAR
14 FILES
15

16 In the case of Margery Wakefield v. The Church of
17 Scientology of California, et al., Case No. 82-1313-T-GC,
18 filed in the United States District Court, Middle District of
19 Florida, Tampa Division, the Court ordered production of the
20 Plaintiff's auditing files (see Order of Court attached
21 hereto as Exhibit "J"). The Wakefield case contains the same
22 type of allegations of fraud as the Armstrong
23 Cross-Complaint.

24 Further, in the case of Marks v. Rudie, 59 Or. App.
25 409, 650, P.2d 191 (1982), cert. denied 294 Or. 460, 658 P.2d
26 1162 (1983), the Oregon Court of Appeals affirmed, without
27 opinion, the holding of the trial court allowing the alleged
28 deprogrammer of a member of the Church of Scientology, to

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review the auditing files of the member. (A copy of the case is attached hereto as Exhibit "K"; a copy of an article from the St. Petersburg Times regarding the case is attached hereto as Exhibit "K-1").

Thus, precedent has been established by other courts for production of auditing/pre-clear folders over the priest-penitent objection.


II

CONCLUSION

Based upon all of the foregoing, it is respectfully submitted that the Court grant the within Motion and order production of documents requested, as well as sanctions in the amount of \$500.00.

DATED: March 22, 1985

Respectfully submitted,
CONTOS & BUNCH

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